

United States District Court
Southern District of Texas
FILED

DEC 21 2009

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN
DISTRICT OF TEXAS – HOUSTON DIVISION

Clerk of Court

12:33pm

IN RE:	§	
NORTHPARK OFFICE TOWER, LP	§	INVOLUNTARY FILING Chapter 11
	§	
Debtor	§	Case No. 09-39205

NORTHPARK OFFICE TOWER LP'S ORIGINAL ANSWER

COMES NOW, NORTHPARK OFFICE TOWER, LP (NorthPark) and files this their Answer Pursuant to 11 U.S.C. § 303 (d) to the involuntary petition herein, dated, December 1, 2009, brought by Petitioner, Kevin Orton, and respectfully shows and alleges:

First Affirmative Defense

1. The involuntary petition fails to state a claim upon which relief can be granted.

Second Affirmative Defense

2. NorthPark Office Tower GP, LLC is the general partner of NorthPark .
3. NorthPark's only asset consists of the property described as 1415 North Loop West. Such property consists of the real property at that location as well as the improvement of a commercial office building. Additionally NorthPark has commercial accounts associated with rent paid by tenants of the commercial building. Hereafter such property will be described as 1415 North Loop West.
4. In January 2009, Petitioner Kevin Orton filed a bad faith voluntary petition of bankruptcy for NorthPark (Case 09-30600). It was in bad faith because he did not have authority to file because he was not the manager of NorthPark Office Tower GP, LLC. He filed this petition for the sole reason of stopping a foreclosure by the then holder of the note. In January, the note was approximately \$4.1 million. The case was dismissed, but NorthPark incurred costs and attorney's fees associated with his bad faith filing.
5. Petitioner Kevin Orton acknowledged that he had no authority to represent NorthPark. The note matured in April 2009. The general partner's management of the property resulted in the note being paid down by \$1.5 million. The note now stands at approximately \$2.6 million.
6. NorthPark has diligently been attempting to refinance the property all the while working with the note holder to prevent foreclosure. In approximately October 2009, ERPILE purchased the note. NorthPark has continued to make arrangements with ERPILE to prevent foreclosure.

7. Petitioner Kevin Orton filed this involuntary petition for the sole purpose of stopping a foreclosure by ERPILE. In it, he claims to be a creditor of NorthPark. He is not. He is a limited partner of NorthPark. NorthPark is not indebted to Kevin Orton. NorthPark is a functioning entity, successfully operating 1415 North Loop West. The note has been reduced by \$1.5 million and NorthPark's debts are being paid.

8. The basis for Kevin Orton's involuntary petition is that he is the guarantor on the note. His fear is that if 1415 North Loop West is foreclosed on, he will owe all or part of the \$2.9 million note. This does not give Kevin Orton proper creditor status under 11 U.S.C. §303.

9. But for the present involuntary bankruptcy petition (as well as Petitioner Kevin Orton's failure to comply with a court order), NorthPark would be able to refinance the note, either with ERPILE or some other lender, and continue successful operations of the limited partnership. To this date, NorthPark has always been able to reach agreement with the holder of the note, even though it matured in April 2009. When ERPILE notified NorthPark of its intent to foreclose on December 1, 2009, NorthPark provided notice to Kevin Orton, and allowed him to provide input to the general partner to be potentially used in the negotiating process. NorthPark reached an agreement with ERPILE on the morning of December 1, 2009, eliminating the foreclosure.

10. Prior to that time, Petitioner Kevin Orton had taken unilateral bad faith action to stop the foreclosure by claiming to represent NorthPark in state district court by seeking a Temporary Restraining Order to stop the foreclosure. His courtroom behavior resulted in his being removed from the courtroom. His filing of the TRO interfered with the negotiations between NorthPark and ERPILE and made it more difficult to reach an agreement. Nonetheless, NorthPark and ERPILE were able to reach agreement on the morning of December 1, 2009.

11. The present involuntary bankruptcy threatens the possibility of completing refinancing of 1415 North Loop West. Kevin Orton's bad faith involuntary filing has negatively impacted negotiations with ERPILE and will negatively impact negotiations with any third party lender who might refinance the property. NorthPark expects proximate damages to be at least three percentage points on the note, or \$90,000.00 and at least \$30,000.00 per year in reduced rent from rent negotiations with tenants. NorthPark seeks these proximate damages and punitive damages of three times the proximate damages under Section 303 of the Bankruptcy Code.

12. By reason of the foregoing the Court should deny Petitioner Kevin Orton's involuntary bankruptcy petition where the bankruptcy proceeding itself has frustrated NorthPark's attempts to satisfy valid claims of its creditors and continue successful operation of the limited partnership.

Third Affirmative Defense

13. NorthPark has more than twelve creditors therefore the Court should deny

Kevin Orton's petition for relief under Section 303 of the Bankruptcy Code.

14. Pursuant to Rule 1003 of Rules of Bankruptcy Procedure , attached hereto is a list of the NorthPark's creditors with their addresses and telephone numbers, also attached is a list of the balances owing to such creditors.

Fourth Affirmative Defense

15. Petitioner Kevin Orton is not a creditor of NorthPark and therefore the Court should deny the petition for relief under Section 303 of the Bankruptcy Code.

Fifth Affirmative Defense

16. NorthPark is solvent and therefore the Court should deny Kevin Orton's petition for relief under Section 303 of the Bankruptcy Code.

WHEREFORE, NORTH PARK respectfully asks this Court to dismiss the involuntary petition with prejudice, and to award attorney's fees, costs, proximate damages and punitive damages in favor of NorthPark against Kevin Orton.

Respectfully submitted,

Richard E. Wakeland



Richard E. Wakeland

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2500 West Loop South, Suite 255
Houston, TX 77027
713-789-7654
713-789-3331 facsimile
Attorney for movant, NorthPark

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading was served on all parties in interest as listed below as well as on the attached creditors list by depositing the same in the U.S. mail, postage prepaid on the 21 of December, 2009.



Richard E. Wakeland

Trustee
U.S. Trustee
Office of the Trustee
515 Rusk Ave., STE 3516
Houston, TX 77002

Alan Gerger
Dunn, Neal & Gerger, LLP
3050 Post Oak Blvd., Ste 400
Houston, TX 77056

Creditors
Stephen G. Hunt
550 Westcott, Suite 350
Houston, TX 77007

Ciano Pasta
5718 Westheimer, Suite 940
Houston, TX 77057

Anthony Nims
Linebarger Goggan
1301 Travis, Suite 300
Houston, TX 77002

Brian Kilmer
3102 Maple Ave, Suite 450
Dallas, TX 75201

1415 North Loop West Creditors

Allied Barton
Eight Tower Bridge
161 Washington Street, Suite 600
Conshohocken, PA 19428
(484) 351-1300
\$3,419.62

Always in Season
P. O. Box 271502
Houston, TX 77277-1502
(713) 681-1414
\$207.48 monthly

Aquatrol Services
28907 Diamond Creek Drive
Magnolia, TX 77355
(281) 447-5503
\$335.58 monthly

AT&T
P.O. Box 5001
Carol Stream, IL 60197-5001
(800) 331-0500
\$442.22 monthly

Brown Electric
4544 South Pinemont Drive
Houston, TX 77041-9341
(713) 460-4646
\$1,943.20

Bugtime Termite and Pest Control
235 FM 1960 Bypass Rd E
Humble, TX 77338
(281) 812-8888
\$81.19 monthly

1415 North Loop West Creditors

CC Rainbow
8700 Long Point, Suite – 210
Houston, TX 77055
(713) 463-0600
\$10,065.52 monthly

Chiller Services
P.O. Box 7373
Houston, TX 77248-7373
(713) 869-4861
\$6,184.40

City of Houston Water Department
P.O. 1560
Houston, TX 77251
(713) 371-1400
\$2,750.00 monthly

Cypress Construction Services
223 River St. "B"
Santa Cruz, CA 95060
(831) 458-2630
\$26,338.67

Disaster America of Texas ***
16554 Air Center Blvd.
Houston, TX 77032
(281) 821-9200
\$13,790.06

HCC
Leo Vasquez Tax Assessor Collector
P. O. 3547
Houston, TX 77253-3547
(713) 368-2000
\$6,209.16

1415 North Loop West Creditors

HISD

Leo Vasquez Tax Assessor Collector

P. O. 3547

Houston, TX 77253-3547

(713) 368-2000

\$77,880.44

Hanover Insurance Company

P. O. Box 4031

Woburn, MA 01888-4031

(508) 855-1000

\$4,871.42

Harris County

Leo Vasquez Tax Assessor Collector

P. O. 3547

Houston, TX 77253-3547

(713) 368-2000

\$85,860.75

Heritage Floors

1303 N Watters Rd

Suite 110

Allen, TX 75013-5413

(972) 954-8077

\$26,527.75

Hermes Commercial Contractors ***

11140 Timber Crest

Houston, TX 77065

(713) 682-4858

\$114,855.61

1415 North Loop West Creditors

Hinojosa Waterproofing ***

P. O. Box 38553

Houston, TX 77238

(281)931-1412

\$92,970.00

Houston Southpro Restoration Services ***

4750 Windfern

Houston, TX 77041

(713)460-0070

\$20,463.18

Kings III of America

751 Canyon Drive, Suite 100

Coppell, TX 75019

(866) 807-3547

\$101.46 monthly

Lawn Management Company

P. O. Box 55504

Houston, TX 77255

(713) 688-2435

\$1,012.14 monthly

Morrison Supply

311 East Vickery Blvd.

Ft. Worth, TX 76104

(817) 336-0451

\$5,927.75

1415 North Loop West Creditors

Mueller Water Conditioning
1500 Sherwood Forest Dr.
Houston, TX 77043
(713)467-3226
\$265 monthly

Protection First
29514 Raestone St.
Spring, TX 77386
(281) 794-0559
\$54.12 monthly

Schindler Elevator Company
1201 West Loop North, Suite 130
Houston, TX 77055-7257
713-692-7165
\$1,658.88 monthly

Security Professionals of Texas
8805 Jones Road, Suite C-101
Houston, TX 77065
(281) 970-7768
\$4,399.20 monthly

Sherwin Williams ***
101 Prospect Ave., N.W.
Cleveland, OH 44115
(216) 566-2000
\$14,245.55

1415 North Loop West Creditors

Star Tex Power
P. O. Box 4802
Houston, TX 77210-4802
(713) 357-2800
\$38,000.00 monthly

Stephen Irwin Co.
P. O. Box 413
New Caney, TX 77357
(281) 443-6339
\$17,330.00

Stripe N Sweep
3201 Antoine Dr.
Houston, TX 77092
(713) 263-7900
\$541.24

Tri Eagle Energy ***
2620 North Crescentridge Dr.
Spring, TX 77381
(281) 681-2381
\$54,476.03

Vossler Plumbing
6117 Milwee, Suite D
Houston, TX 77092
(713) 688-2304
\$4,373.15

***under dispute

- all amounts estimated